

NAVY review(s)
completed.

DEPARTMENT OF THE NAVY
Office of the Secretary
Washington 25, D. C.

SECNAV 5870.1
AO: PD: LRP: ar
16 January 1953

SECNAV INSTRUCTION 5870.1

From: Secretary of the Navy
To: All Ships and Stations

Subj: Use of copyrighted material in Navy publications

1. Purpose. This Instruction prescribes Department of the Navy policies and procedures pertaining to the acquisition of license rights to reproduce copyrighted material in Navy publications.

2. Scope. Policies and procedures prescribed in this Instruction apply to the obtaining of necessary license rights and releases when any activity of the Department of the Navy desires to publish books, pamphlets, articles, manuals, or any other printed or processed matter in which copyrighted material is to be reproduced.

3. Nature of Copyright and Copyright Notice. A copyright is a right granted by the Congress of the United States, under authority of the Constitution, to authors for the protection of their original compositions. The copyright protects all the writings of an author, provided such writings are properly marked with the required notice when published. The right continues for 28 years, and may be renewed for another 28 years. Permission (license or release) to use copyrighted material without charge is a privilege and a favor. A license is a mere permission to use, and therefore there is ordinarily no need for the formalities of a legal document as is required for obtaining more substantial rights. In order that a valid copyright may be held, the law requires, with respect to published works, that the material bear on the title page, or on the back of the title page, the word "Copyright" or the abbreviation "Copr" together with the name of the copyright holder and the year in which the work was first published. On maps, photographs, and works of art it is sufficient notice if the letter "C" in a circle is used, together with the initials or a symbol of the copyright owner, provided that on the back, margin, or some other accessible portion, his name and the year of publication shall appear.

4. Liability for Infringement. For another to practice without permission any of the exclusive legal rights granted to the copyright proprietor, such as copying, reproducing, translating, publishing, and performing and delivering in the case of oral renditions, is an infringement of the copyright and is punishable at law by award to the copyright proprietor of either the actual damages, or statutory damages in an amount not less than \$250 and not more than \$5,000 for each violation. It is a principle of law that the United States Government is not liable for its wrongs unless it permits itself to be

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sued in court, and no statute expressly gives consent for suit against the Government on account of copyright infringement. The Federal Tort Claims Act (28 U.S.C. 2671-2680) has thus far not been construed to authorize such a suit. However, the officers and employees of the Government are personally liable for their infringements, even though such infringements were committed in the course of their duties. (Towle vs. Ross, D. C., Ore. 1940, 32 F. Supp. 125.)

5. Navy Policy. The Department of the Navy recognizes that the owner of copyrighted material has a property right in such material and it is the policy of the Department that copyrighted matter will not knowingly be incorporated in publications prepared by or for the Department, except with the written consent of the copyright owner, or upon the approval of the Secretary of the Navy. In this regard, the act of 30 July 1947 (17 U.S.C. 8) provides that "the publication or republication by the Government, either separately or in a public document, of any material in which copyright is subsisting shall not be taken to cause any abridgement or annulment of the copyright or to authorize any use or appropriation of such copyright material without the consent of the copyright proprietor."

6. Request for Permission to Publish. Upon determination that copyrighted material is required to be included in material under preparation for publication by activities of the Navy, the preparing activity shall initiate and forward to the Administrative Officer, Navy Department, a request, in duplicate, as follows:

- a. The request shall be for no greater rights than actually needed.
- b. The request shall fully identify the material for which permission to publish is requested, and shall include the title of the basic work, the name of the author, the name of the publisher, and the date published. The exact passages required shall be specified, and "blanket" permission to use portions of material as later determined shall normally not be requested.
- c. The request shall explain the proposed use and contain the condition of license, so that only the affirmative reply of the licensor need be necessary.

7. Review and Coordination of Requests. The Administrative Officer, Navy Department, will review and coordinate all such requests for permission to publish copyrighted material, in accordance with the following:

- a. Any legal questions or problems arising in the course of review will be referred by the Administrative Officer, Navy Department, to the Chief of Naval Research for review and decision.

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b. The Administrative Officer, Navy Department, will prepare a request, in simple format for convenient and expeditious reply, and forward it to the holder of the copyright covering the material desired to be used.

c. Upon receipt of reply from the copyright owner, the Administrative Officer, Navy Department, will transmit to the requesting activity the license or release (in duplicate, one copy to accompany the printing requisition when submitted), or the copyright owner's refusal to release, as the case may be. In most instances the copyright owner will be willing to give permission to publish or to make copies without charge. When the copyright owner so requests, a credit line shall be used. On the flyleaf or other appropriate page of a publication shall be listed all pages which contain copyrighted material. If the copyright owner insists upon payment, section 611 of the Department of Defense Appropriation Act, 1953, authorizes the expenditure of funds for purchases of copyrights and licenses thereunder. (See par. 8.)

d. When there is any question as to whether the license or release as received is adequate to protect the individuals who propose to publish the material, the question will be referred by the Administrative Officer, Navy Department, to the Chief of Naval Research for review and decision.

8. Purchase of Licenses. Licenses and releases under, or title to, copyrights may be purchased in the following circumstances:

a. When the extent or circumstances of the publication would make it inequitable to request a free license.

b. In the event the copyright owner refuses to grant a free license, and it is determined by the Secretary of the Navy that the official use of the copyrighted material is either essential or desirable.

If the purchase of a copyright, or a license or release under a copyright, is necessary under the circumstances stated above, the matter will be referred by the Administrative Officer, Navy Department, to the Chief of Naval Research for review. Such review will include consideration of the applicability of the "fair use" doctrine, and of whether the material is in the public domain.

9. Manuscript Review. The Administrative Office, Navy Department, will review, to the extent possible, manuscript submitted to that office for publication to ascertain whether copyrighted material has been included, and if so, whether license or release has been obtained as required. In those cases in which copyrighted material is found

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to be included, the Administrative Officer, Navy Department, will notify the originator of the manuscript, and will withhold the material from publication until the copyrighted material has been deleted or the necessary release has been obtained from the copyright owner. In the field this review shall be conducted by the Commandants of the Naval Districts, Commandant Potomac River Naval Command, Commander Marianas, and Chief of Naval Air Training (Publications and Printing Officers), acting for the Administrative Officer, Navy Department.

10. Effective Date. This Instruction is effective upon receipt.

DAN A. KIMBALL

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ARMY PROCUREMENT CIRCULAR }
No. 24

DEPARTMENT OF THE ARMY
WASHINGTON 25, D. C., 22 December 1952

USE OF COPYRIGHTED MATERIAL IN PUBLICATIONS

ANNOUNCEMENT—Department of Defense Directive.....	Section I
IMPLEMENTATION—Department of the Army.....	II

I. ANNOUNCEMENT.—Department of Defense Directive, recently issued and covering the above subject, is set forth below.

SUBJECT: Use of Copyrighted Material in Department of Defense Publications

I. PURPOSE

This directive prescribes policies and instructions for the Department of Defense in the acquisition of license rights to reproduce copyrighted material in Department of Defense publications.

II. SCOPE AND APPLICABILITY

This directive provides instructions for obtaining the necessary license rights or releases whenever any activity of the Department of Defense desires to publish original compositions, such as books, handbooks, manuals, etc., in which copyrighted material is reproduced. As used in this directive, the term "Department of Defense" includes the Office of the Secretary of Defense, the military departments and all subdivisions and agencies of the Office of the Secretary of Defense and the military departments.

III. GENERAL

a. *Nature of Copyright.* A copyright is a right granted by the Congress under the authority of the Constitution to authors for their original compositions. The copyright protects all the writings of an author, provided they are properly marked with the required notice when published. The right continues for twenty-eight years and may be renewed for another twenty-eight years.

b. *Copyright Notice in Published Works.* In order to have a valid copyright, the law requires, with respect to published works, that the copyright proprietor mark on the title page, or on its back, the word "Copyright" or the abbreviation "Copr" together with his name and the year in which first published. On maps, photographs and works of art, it is sufficient notice of copyright if the letter C in a circle is used, e. g. © together with the initials or a symbol of the copyright owner, provided that on the back, margin, or some accessible portion, his name and the year published shall appear.

c. *Unpublished Works.* Problems relating to copyright notice and protection given to unpublished works should be referred to the office designated to be responsible for patent and copyright matters for the activity concerned.

IV. LIABILITY FOR INFRINGEMENT

For another to practice any of the exclusive legal rights granted to the copyright proprietor, such as copying, reproducing, translating, publishing, and performing and delivering in the case of oral renditions, is an infringement of the copyright and is punishable at law by award to the copyright proprietor of either the actual damages, or statutory damages in an amount not less than \$250 and not more than \$5000 for each violation. It is a principle of law that the United States Government is not liable for its wrongs unless it permits itself

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to be sued in court, and no statute expressly gives consent for suit against the Government on account of copyright infringement. The Federal Tort Claims Act (28 U. S. C. 2671-2680) has thus far not been construed to authorize such a suit. However, the officers and employees of the Government are personally liable for their infringements, even though such infringements were done in the course of their duties. (Towle vs. Ross, D. C., Ore. 1940, 32 F. Supp. 125).

V. POLICY

The Department of Defense recognizes that the owner of copyrighted material has a property right in such material and it is the policy of the Department of Defense that copyrighted matter will not knowingly be incorporated in publications prepared by or for the Department of Defense, except with the written consent of the copyright owner, or upon the approval of the Secretary of the Military Department concerned or his duly authorized representative. The attention of the copyright owners should be invited in appropriate instances to the Act of 30 July 1947 (17 U. S. Code 8), providing that "the publication or republication by the Government, either separately or in a public document, of any material in which copyright is subsisting shall not be taken to cause any abridgement or annulment of the copyright or to authorize any use or appropriation of such copyright material without the consent of the copyright proprietor."

VI. PROCEDURES AVAILABLE

In most instances, the copyright owner will be willing to give permission to the Department of Defense to publish or make copies without charge. A credit line may be used where the copyright owner requests it. If the copyright owner insists upon payment, Section 611 of the Department of Defense Appropriation Act, 1953, authorizes the expenditure of funds for the purchases of copyrights and licenses thereunder.

VII. INSTRUCTIONS FOR OBTAINING LICENSES WITHOUT CHARGE

a. *General.* Permission (license or release) to use copyrighted material without charge is a privilege and a favor. A license is a mere permission to use, and therefore, there is ordinarily no need for the formalities of a legal document as is required for obtaining more substantial rights.

b. *Check List.* The following check list will be rigorously observed in making requests for free licenses:

- (1) The request shall be for no greater rights than actually needed.
- (2) The request shall fully identify the material for which permission to publish is requested.
- (3) The request for license shall explain the proposed use and contain the conditions of the license, so that the licensor need only give his affirmative consent.
- (4) The request shall be submitted to the copyright owner in duplicate, so that such owner may retain one copy and return the other copy with his assent written thereon.
- (5) A self-addressed return envelope shall be inclosed.
- (6) The following will not be requested:
 - (a) Signature by more than one corporate officer.
 - (b) Corporate seal.
 - (c) Corporate certificate.
 - (d) Warranty as to title.
 - (e) The return of more than one copy of the license or release.

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c. *Legal Review.* Whenever there is any question whether the license is necessary or adequate to protect the individuals who propose to publish the material, the license (or release) when received, will be submitted to the office of the activity concerned having jurisdiction over patent and copyright matters for review.

d. *Sample Format.* There is attached, as Inclosure 1, a sample format of a form of request for release (or a license) to use copyrighted material, which was developed in response to request of the publishing industry. Any such request should be patterned after the sample format whenever appropriate. The Departments may require that any substantive deviation therefrom shall be submitted for approval to the office designated to be responsible for patent and copyright matters for the activity concerned.

VIII. INSTRUCTIONS WHEN THE LICENSE IS TO BE PURCHASED

Licenses and releases under, or title to, copyrights may be purchased in the following circumstances:

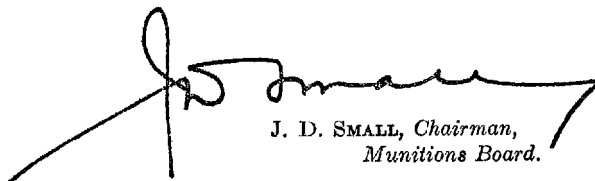
a. The extent or the circumstances of the publication would make it inequitable to request a free license.

b. In the event the copyright proprietor refuses to grant a free license, and it is determined by the Secretary of the Department concerned, or his duly authorized representative, that the official use of the copyrighted material is either essential or desirable.

If it is determined to purchase a copyright, or a license or release under a copyright, under the circumstances stated above, personnel of the office designated to be responsible for furnishing patent and copyright advice for the activity concerned, shall be consulted. Such consultation shall include consideration of the applicability of the "fair use" doctrine, and of whether the material is in the public domain.

IX. EFFECTIVE DATE

This directive is *effective immediately*.



J. D. SMALL, Chairman,
Munitions Board.

Inclosure (1)

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SAMPLE FORMAT
for
RELEASE
[LETTER HEAD]

Date

[Name of Company]
[Address]
[Salutation]

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This office is engaged in the preparation of the manuscript material for a work to be published for defense purposes under the title-----
(Insert title when known)-----

Permission is requested to include in the above-identified work the following material, to wit: ----- (Here insert specific information with respect to the pages and lines of the illustrations and/or textual matter to be released.)-----

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company and written by-----

It will be appreciated if you will indicate below, on one copy of this letter, whether the above-identified material, with an appropriate credit line, may be used in the above work. A self-addressed envelope is inclosed for your convenience.

(Signature)

(Title)

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The above RELEASE is hereby granted, royalty free.

The material covered by this release may (may not ☐) be placed on sale in the Government Printing Office.

(Name of copyright owner or authorized agent)

BY-----

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II. IMPLEMENTATION.—1. The provisions of this Department of Defense Directive will be complied with by all concerned within the Army Establishment, including the major oversea commands.

2. Any questions which may arise regarding interpretation of the Department of Defense Directive will be referred, through channels, to the Assistant Chief of Staff, G-4, Department of the Army, Washington 25, D. C. (ATTN: Chief, Purchases Branch).

3. This circular is automatically rescinded effective upon publication of the subject matter of the Department of Defense Directive in the Armed Services Procurement Regulation.

[AG 400.13 (18 Dec 52)]

BY ORDER OF THE SECRETARY OF THE ARMY:

OFFICIAL:

WM. E. BERGIN
Major General, USA
The Adjutant General

J. LAWTON COLLINS
Chief of Staff, United States Army

DISTRIBUTION:

According to requirements submitted on DA AGO Form 12.

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U. S. GOVERNMENT PRINTING OFFICE: 1952